Supreme Court, U.S.
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07-833

No.

In The

Supreme Court of the United States

Richard Maynor Blackstock,

Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

On Petition For a Writ of Certiorari
To The Circuit Court of the United States
For the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Richard Maynor Blackstock
09936-062 – Inmate Pollock, Louisiana
In *propria persona*
10632 South Memorial Drive #190
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Questions Presented

1. Whether the Petitioner has the constitutionally secured right to have the known and definite law for the crime he was accused of presented in the Indictment as secured in the Fifth and Sixth Amendments?
2. Whether the Petitioner has the constitutionally secured right to have the known and definite law for the crime he was accused of presented in the Trial by Jury to the Jury members in the Jury Instructions as secured in the Fifth and Sixth Amendments?
3. Whether the Petitioner has the constitutionally secured right to have the known and definite law and the legal duty created therein said definite law for the crime he was accused and convicted of presented in the Trial by Jury to the Jury members in the Jury Instructions as secured in the Fifth and Sixth Amendments?
4. Whether the Petitioner has the constitutionally secured right to have the known and definite law and the legal duty created therein said definite law for the crime he was accused and convicted of made known to the Accused in the Trial by Jury as secured in the Fifth and Sixth Amendments?
5. Whether the Petitioner can be convicted of a crime for willfully violating a known legal duty when the Petitioner has no knowledge of the known and definite law and this known and definite law is not disclosed to the Petitioner in the Indictment or Trial by Jury as secured in the Fifth and Sixth Amendments?
6. Whether the Petitioner can be convicted of a crime for willfully violating a known legal duty

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when the Petitioner has no knowledge of the legal duty created by a known and definite law and this legal duty is not disclosed to the Petitioner in the Indictment or Trial by Jury as secured in the Fifth and Sixth Amendments?

7. Whether the Petitioner can be convicted of a crime for willfully violating a known legal duty when the Petitioner has no knowledge of the known legal duty when both the legal duty created in the known and definite law are not disclosed to the Petitioner in the Indictment or Trial by Jury as secured in the Fifth and Sixth Amendments?
8. Whether the Petitioner can be tried and convicted in a territorial court known as a United States District Court within the several States of the Union in violation of Courts of the United States established arising under Article III in all Cases in Law and Equity exercising the judicial Power of the United States under the Authority of the United States?
9. Whether the Petitioner can be denied a constitutional court of the United States exercising the judicial Power of the United States under the Authority of the United States arising under Article III for the protections of the private rights of the Petitioner in violation of Courts of the United States arising under Article III?
10. Whether the Petitioner can be denied his nationality as a Californian, his political status and citizenship status and be forced into a fictional status of a "citizen of the United States" when no such grant of Power is granted in the Federal Constitution except "To establish a uniform Rule of Naturalization" in violation of the Federal Constitution and the Bill of Rights?

11. Whether the Petitioner can be denied immediate release from incarceration and dismissal of the criminal charges when the Circuit Court of the United States for the Tenth Circuit did not affirm the United States District Court's judgment of conviction and sentencing, but instead of the Petitioner's Appeal did "AFFIRM all remaining claims" in violation of the Fifth and Sixth Amendments.
12. Whether the Petitioner can be denied a "Writ of Habeas Corpus Ad Subjiciendum" arising under Article I Section 9 of the Federal Constitution ***recast*** from a Writ into a Motion in a criminal Case?

Parties to the Proceedings

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Attachments

Attachment 1, being a ***Certified Copy of the original*** filed into the public record in Tulsa County, Oklahoma Doc # 2007 121649 Page 1 on October 10, 2007 14
Attachment 2 that the reviser's notes are authoritative in interpreting the Code of 28 U.S.C. § 132 30

Attachment 2, are the Revisor's Notes for 28 U.S.C. § 132 of the 1948 act 29

Opinions Below

The unpublished opinion is in the **Appendix 02 – Nos 06-5201, 06-5198 – Circuit Court of the United States for the Tenth Circuit.**

Jurisdiction

The jurisdiction of the Supreme Court of the United States arising under Article III section 1 and 2 of the Federal Constitution in all Cases in Law and Equity exercising the judicial Power of the United States under the Authority of the United States and the Judiciary Act of 1789 Section 13 as a Law of the United States.

Petitioner is precluded from citing a Title 28 United States Code section, as the Petitioner is challenging the establishment of the United States District Court being a territorial court is unconstitutional in any of the several States of the Union of the Federal Constitution as it does not arise under Article III in all Cases in Law and Equity exercising ***the judicial Power of the United States*** under the Authority of the United States.

Petitioner is an American citizen, citizen of the United States of America, Natural Born Native of the one of the several States being California, i.e. a "Californian" (Gov. Style Manual 5.23 ("In designating the natives of the several States . . .")) domiciled in Oklahoma as a citizen of Oklahoma.

Petitioner has filed into the public record and recorded in Tulsa, Oklahoma by Tulsa County Clerk – EARLENE WILSON, Doc # 2007121649 Pages 1 his *Certificate of Political Status, Citizen Status and Allegiance*, which is reproduced in the Appendix – 1, page 1.

Petitioner is not a "citizen of the United States" under Civil Rights Act of 1866, as amended, ("CRA 1866") memorialized in 14th Amendment to the Constitution of the United States; and, as found in the Code of 42 U.S.C. §§§ 1981, 1982 and 1988 (Revised Statutes of 1878 Title XXIV – Civil Rights).

Constitutional Provisions Involved

Constitution provisions of Article I Section 9 Clause 1 "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

Constitutional provisions of Article III of the Federal Constitution "Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."; and, Article III of the Federal Constitution "Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States."

Constitutional provisions of Article VI of the Federal Constitution "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. . . . and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;"

Fifth Amendment to the Federal Constitution "nor be deprived of life, liberty, or property, without due process of law;"

Sixth Amendment to the Federal Constitution "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Statement of Facts

Petitioner was Indicted and taken to trial in the United States District Court Northern District of Oklahoma in which the Indictment did not disclose the known and definite law in which by and through the legal duty is established in the Indictment or in the trial.

Petitioner was charged with violation of this known and definite law; and the legal duty created therein said known and definite law; and was to be a known legal duty which the Petitioner did not know about nor was it disclosed in the Indictment or the trial in which the Petitioner was convicted of willfully violating this known legal duty.

The Internal Revenue Service ("IRS") agent government witnesses in the trial confirmed that the law did not have to be disclosed to the petitioner, nor the legal duty and the IRS refused to disclose to the Petitioner any criminal penalties might be involved.

The Petitioner also filed a common law "Writ of Habeas Corpus Ad Subjiciendum" ("Habeas Corpus") into a "District Court of the United States" denoted as Case 4-06-cv-554 which was recast by and though

the process of a 28 U.S.C. § 2255 (sic) into a motion and incorporated into the criminal case of 4-06-cr-62 over the strong objections of the Petitioner to no avail.

Petitioner appealed both the recasting of the Habeas Corpus 4-06-cv-554 and 4-06-cr-62 to the "Circuit Court of the United States for the 10th Circuit " ("10th Circuit") where the two cases of 06-5201 (appeal) and 06-5198 (habeas) were combined in one unpublished opinion denying in part and affirming in part the Petitioner's Appeals. The 10th did not AFFIRM the judgment in 4-06-cr-62 or release the Petitioner, but instead did "AFFIRM all other claims" of the Petitioner. The issues affirmed in the Appeal 06-5201 were voluminous.

Petitioner filed for a rehearing but it was denied.

I. Violation of Fifth and Sixth Amendment to the Federal Constitution.

The IRS government witnesses Brian Miller ("Miller") in the trial when asked under oath if the law must be disclosed to the Petitioner to which Miller replied "No." Miller also stated under oath that he ***thinks*** it is part of the rules that the Petitioner know that there is a known legal duty, but directly after this statement, Miller admits that in a Petitioner to sent to the IRS no mention of any penalty was given to the Petitioner leaving the law and known legal duty with penalties unanswered, but to take it up on appeal. See **Appendix 04 - Jury Excerpt of Sworn Testimony at Trial of Miller – Government Witness.**

II. Violation of the Fifth and Sixth Amendment to the Federal Constitution - The

Known and Definite Law, the Legal Duty created therein and Known Legal Duty.

Judge Kern of the USDC did state that he would give the law to the jury in the instructions, but upon inspection of the jury instructions no where is the "definite and known law" disclosed; and no where in the jury instructions is the "legal duty" created in the this known and definite law disclosed to the jury; and no where in the jury instructions is the "known legal duty" that the Petitioner must have knowledge disclosed in the jury instructions. See **Appendix 03 –Jury Instructions.**

III. The USDC is a territorial court under the Laws of Congress.

Contained in the public record of, to wit:

Title 28
United States Code Congressional Service
Pages 1487-2174
80th Congress-2d Session
Epochal Legislation
New
Title 28-United States Code
Judiciary and Judicial Procedure
Approved June 25, 1948
Effective September 1, 1948
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(hereafter "1948 Congressional Service") the facts contained on page xxx state "The Congress, Laws of 80th Congress Second Session" are the Title 28 Code and not "Laws of the United States" as found in Article VI of the Federal Constitution.

In the 1948 Congressional Service on page 1732 the facts in the Revisers Notes as presented state that a territorial court is combined with other courts

in the 1940 Code with the combined result being the "United States District Court" as evidenced on page 1521, 28 U.S.C. § 132.

IV. The USDC in the 1948 Congressional Service states the establishment an Article III Court of the United States exercising the "judicial Power of the United States."

In the 1948 Congressional Record on page 1521 it clearly states nothing about the "judicial Power of the United States", but instead states only the "judicial power of a district court" attached to the "United States District Court."

V. The Writ of Habeas Corpus has not been Suspended.

There is not provision for any court, Congress or by any other means to recast or morph a Writ of Habeas Corpus into a motion found in the Federal Constitution.

The Petitioner has found no amendment to the Federal Constitution that would permit the secured Writ of Habeas Corpus to be altered or abolished.

The Petitioner has found no Law of the United States that has suspended the Writ of Habeas Corpus in Article I Section 9 Clause 2.

REASONS FOR GRANTING THE PETITION

I. Exceptional Circumstances

This case potentially affects each and every citizen of the several States' ability to obtain a fair trial pursuant to the Fifth Amendment with Due Process of Law; and, the Sixth Amendment of a Trial

by the State; and, to be informed of the nature and case of Charge.

This case potentially affects each and every citizen of the several States to have constitutional courts of the United States arising under Article III exercising the judicial Power of the United States to protect the unalienable and private rights of the people of these United States.

The legal questions presented here are not "political questions" in themselves and they are resolvable by this Court exercising its Article III jurisdiction as they carry "significant political overtones" or "political implications" upon "'which depend public and private interests of vast magnitude.'" *INS v. Chadha*, 462 U.S. 919, 942-43(1983).

II. The Known and Definite Law; and, the Legal Duty established in the Known and Definite Law; and, the Known Legal Duty Established in the Known and Definite Law Was not Known by the Petitioner or Disclosed/Charged in the Indictment or the Trial.

In the adjudged decision of *Cheek v. United States*, 498 U.S. 192, 199, 201-202 (1991) it was held that willfulness is not disjunctive that there must exist a law that is definite and knowable by the defendant; and, willfulness is not disjunctive that this definite and knowable existing law imposes a legal duty to file by either statute or (substantive) regulation upon the defendant; and, willfulness is not disjunctive with the definite and knowable existing law that imposes the legal duty to file must be known by the defendant; and, willfulness is not disjunctive that the defendant voluntarily and intentionally violated that

known legal duty imposed by the definite and knowable existing law.

Therefore to make willfulness a crime by the defendant, all of the essential elements are as follows, to wit:

1. There must exist a definite and knowable law; and,

2. This definite and knowable law must impose a legal duty to file by statute or (substantive) regulation; and,

3. This legal duty to file imposed by the definite and knowable law by statute or (substantive) regulation must be known by the defendant; and,

4. The defendant must have voluntarily and knowingly violated this known legal duty imposed by the definite and knowable existing law by statute or (substantive) regulation.

The was held in the adjudged decision in *Cheek v. United States*, 498 U.S. 192, 199, 201-202 (1991), to wit:

> *At 199* - Based on the notion that **the law is definite and knowable, the common law presumed that every person knew the law.** ***[Emphasis added]***
>
> * * *
>
> *At 201-202* - **Willfulness,** as construed by our prior decisions in criminal tax cases, requires the Government to **prove that the law imposed a duty on the defendant**, that the **defendant knew of this duty,** and that he **voluntarily and intentionally violated that duty**. We deal first with the case where the issue is whether the defendant knew of the duty purportedly

imposed by the provision of the **statute or regulation** he is accused of violating, a case in which there is no claim that the provision *202 at issue is invalid. In such a case, if the Government **proves actual knowledge of the pertinent legal duty,** the prosecution, without more, **has satisfied the knowledge component of the willfulness requirement.** But **carrying this burden requires negating a defendant's claim of ignorance of the law** or a **claim that because of a misunderstanding of the law,** he had a good-faith belief that he was not violating any of the provisions of the tax laws. This is so **611 because **one cannot be aware that the law imposes a duty upon him and yet be ignorant of it, misunderstand the law, or believe that the duty does not exist.** In the end, the issue is whether, based on all the evidence, the Government has proved that the defendant **was aware of the duty at issue,** which cannot be true if the jury credits a good-faith misunderstanding and belief submission, whether or not the claimed belief or misunderstanding is objectively reasonable.

In this case, if Cheek asserted that he truly believed that the Internal Revenue Code did not purport to treat wages as income, and the jury believed him, the Government would not have

> carried its burden to prove willfulness, however unreasonable a court might deem such a belief. Of course, in deciding whether to credit Cheek's good-faith belief claim, the jury would be free to consider any admissible evidence from any source showing that Cheek was **aware of his duty to file a return** and **to treat wages as income**, **including evidence showing his awareness** of the **relevant provisions of the Code or regulations**, of **court decisions rejecting his interpretation of the tax law, of authoritative rulings of the Internal Revenue Service**, or **of any contents of the personal income tax return forms** and **accompanying instructions** that made it plain that wages should be returned as income. ***[Emphasis added]***

"The existence of a ***known legal duty*** owed by a taxpayer is a question of law for the court" *[Emphasis added]*, and this was held in *U.S. v. Pirro*, 96 F.Supp.2d 279, 283 (D.C. S.D. N.Y. 1999). *Affirmed in U.S. v. Pirro*, 212 F.3d 86 (2nd Cir. 2000).

It is undeniable that unless the known and definite law is known first, that it is impossible to discern what legal duty is established, if any. These two prongs of *Cheek, supra.* ***are essential prior*** to the establishment that the Petitioner had a "known legal duty." And for the Petitioner to have willfully violated a known legal duty being prong four mandates that the first three prongs of *Cheek, supra.*

be known by the Petitioner, exist and have application to the Petitioner, otherwise the Petitioner is precluded from willfully violating a known legal duty.

"The existence of a ***known legal duty*** owed by a taxpayer is a question of law for the court" *[Emphasis added]*, and this was held in *U.S. v. Pirro*, 96 F.Supp.2d 279, 283 (D.C. S.D. N.Y. 1999). *Affirmed in U.S. v. Pirro*, 212 F.3d 86 (2nd Cir. 2000).

The Petitioner was not charged in the Indictment with a known and definite law with a legal duty that had application to the Petitioner that was a known legal duty.

The IRS agent government witness Miller stated that the law did not have to be given to the Petitioner. And Miller continued on in his sworn testimony that he didn't think the Petitioner had to be told of the legal duty. The Petitioner has submitted a letter to the IRS attempting to determine the issues of law and legal duty. Miller testified that the IRS did not answer and did not inform the Petitioner that there could be criminal penalties involved. See **Appendix 04 - Jury Excerpt of Sworn Testimony at Trial of Miller – Government Witness.**

The cases that pronounce or hold that "taxpayers", i.e. Individuals, must file Returns is posited in 26 U.S.C. § 6012 ***but is not required to be disclosed to a person indicted***, to wit: *United States v. Vroman*, 975 F.2d 669, 670-671 (9th Cir. 1992); *United States v.* Hicks, 947 F.2d 1356, 1360 (9th Cir. 1991); *United States v. Bower*, 920 F.2d 220, 222 (4th Cir. 1990); *United States v. Drefke*, 707 F.2d 978, 981 (8th Cir. 1983); *United States v. Kahl*, 583 F.2d 1351, 1355 (5th Cir. 1978); *United States v.*

Spine, 945 F.2d 143, 149 (6th Cir. 1991); *United States v. Stierhoff*, 500 F.Supp. 2d 55, 62-63 (D. R.I. 2007); *United States v. Washington*, 947 F.Supp. 87, 91 (S.D. N.Y.1996); Case and other unpublished Cases such as *United States v. Gaumer*, 27 F.3d 568, 572 (6th Cir. 1994).

This "law of Congress" was never disclosed to the Petitioner and is evidenced by the IRS testimony of Miller under Oath, supra. *And Judge Kern DID NOT disclose this to the Jury Members in the jury instructions!* **See Appendix 03 – Jury Instructions.**

The Petitioner has relied upon the holding of the Supreme Court of the United States that only ***substantive regulations*** have the "***force and effect of law***" under the adjudged decision of *Chrysler Corp. v. Brown*, 441 U.S. 281, 295, 296, 301-303 (1979). This was part of the Appellate Brief that was AFFIRMED by the 10th Circuit.

Contained in 26 U.S.C. § 6012, Congress identifies that a Return must be made under certain conditions. As the IRS must administer the income tax using ***substantive regulations***, a search of all substantive regulations in Title 26 of the CFRs of "1.6012-xx yields one substantive regulation, being 1.6012-1 under the statutory authority "Authority: Sec. 1445 (98 Stat. 655; 26 U.S.C. 1445), sec. 6012 (68A Stat. 732; 26 U.S.C. 6012), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)."

As 26 CFR § 1.6012-1 is a substantive regulation that has the force and effect of law, contained in said substantive regulation we find the following, to wit:

> (a) Individual citizen or resident--(1) In general. Except as provided in

subparagraph (2) of this paragraph, **an income tax return must be filed by every individual for each taxable year beginning before January 1, 1973**, during which he receives $600 or more of gross income, and for each taxable year beginning after December 31, 1972, during which he **receives $750 or more of gross income, if such individual is:**

(i) A citizen of the United States, whether residing at home or abroad,

(ii) A resident of the United States even though not a citizen thereof, or

(iii) An alien bona fide resident of Puerto Rico during the entire taxable year. [Emphasis added]

Under the substantive regulation of 1.6012-1, a man/woman must be either a "***citizen of the United States***", or "a ***resident of the United States*** even though not a citizen thereof", or an "***alien*** bona fide resident of Puerto Rico."

As evidenced by the Allocution and motions filed in the 4-06-cr-62 still unanswered and by the unpublished opinion there has been no determination or ultimate fact allegation or determination that the Petitioner was in fact of any of these mandatory status', but instead it is just not directly addressed. See **Appendix 02 – Nos 06-5201, 06-5198 - Circuit**

Court of the United States for the Tenth Circuit.

II. Jurisdiction and Venue of Petitioner – Political Status, Citizenship and Allegiance.

Jurisdiction arises under Article III; and, arises under the Privileges and Immunities Clause in Article IV Section 2 Clause 1 in which the Petitioner shall have the protections of the laws of one of the several States, being Oklahoma, as the Petitioner is domiciled within the territorial boundaries of Oklahoma as a citizen of Oklahoma, i.e. a citizen of one of the several States, but is a Californian, i.e. ***native of one of the several States*** (Government Style Manual 5.23) as his political status and allegiance. As an Offer of Proof of the ***political status, citizen status and allegiance*** of the Petitioner, see **Appendix 01 – CERTIFICATE OF POLITICAL STATUS, CITIZEN STATUS AND ALLEGIANCE** , being evidence filed into the public record in Tulsa County, Oklahoma Doc # 2007 121649 Page 1 on October 10, 2007. The determination of the political status, citizen status and allegiance of the Petitioner is beyond the judicial Power and authority of the judicial Branch of the Federal Government.

In the adjudged decision of *Dred Scott v. Sanford*, 60 U.S. 393, 586-587 (1856) "Under the Constitution of the United States, each State has retained this power of determining the political status of its ***native-born inhabitants***, and no exception thereto can be found in the Constitution." *Ibid at 581* "[W]e find that the Constitution has recognized the general principle of public law, ***that allegiance and citizenship depend on the place***

of birth" i.e. *jus soli. [Emphasis added]* See *Gaudio v. Dulles*, 110 F.Supp 706, 708 (D.C. D.C. 1953). Both of the parents of the Petitioner are natives of the several States.

The Venue of this instant Case in arising under Article III in one of the several States of the Union and not in any territory, possession, the District or Article I court of the legislative Powers granted to Congress in the several States.

The Petitioner ***is not a "citizen of the United States"*** as enacted into law in the Civil Rights Act of 14 Stat 27 of 1866 as amended and Codified today in 42 U.S.C. §§§ 1981, 1982 and 1988, which uses the Revised Statutes of 1878 including Title XXIV – Civil Rights of 1878.

III. Courts Must Take Judicial Notice of Public Records.

No formal introduction of the public records of rules and regulations are required and the courts of the United States are to take judicial notice. This holding is found in the adjudged decision of *Caha v. United States*, 152 U.S. 211, 221, 222 (1894), to wit:

> But we are of opinion that there was no necessity for a formal introduction in evidence of such rules and regulations. They are matters of which courts of the United States take judicial notice. . . [T]he rules and regulations prescribed in pursuance of such authority become a mass of that body of public records of which the courts take judicial notice.

On judicial notice, see also *Lilly v. Grand Trunk Western R. Co.*, 317 U.S. 481, 488 (1943) and

The United States v. Heschmaker, 63 U.S. 392, 405 (1859).

The courts are to give public acts ***legal effect***, and this is held in the adjudged decision of *Armstrong v. United States*, 80 U.S. 154, 156 (1871), to wit:

> This was a public act of which all courts of the United States are bound to take notice, and to which all courts are bound to give effect.

Regardless of whether the sovereign is ***de jure*** or ***de facto***, determinations by the ***executive or legislative branch binds the judges, even if not formally put into evidence***, and this is held in the adjudged decision of *Jones v. United States*, 137 U.S. 202, 212, 214 (1890)

Therefore, the Court shall take judicial Notice of all public records, adjudged decisions of the all courts, and documents, whether cited in this specific document or attached hereto by attachments.

IV. Laws of Congress – Article I grant of legislative Powers, the District and the Territories and Possessions wherein Congress has plenary power – acts as both the Federal Government and a State government.

Congress enacts "laws of Congress" in the District, territories and possessions of the United States wherein Congress has plenary municipal authority acting the capacity of one of the several States and the federal government. The source of the plenary power of Congress for "laws of Congress" is Article I for the District and Article IV for the territories.

Under the plenary power of Congress within the District, Congress can clothe courts that are deemed to possess the Article III judicial Power of the United States. See *Palmore v. United States*, 411 U.S. 389, 405, 408 (1973); *O'Donoghue v. United States*, 289 U.S. 516, 545, 546-547, 551 (1933). Outside of the District, Congress's special powers of Article I Section 8 precludes the vesting of the judicial Power of the United States in inferior Courts of the United States. See *O'Donoghue v. United States*, 289 U.S. 516, 546 (1933). "The laws of Congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government." *Caha v. United States*, 152 U.S. 211, 215 (1894).

In the territories Congress under the "laws of Congress" can create legislative courts under Article IV and even clothe these courts with the appearance of Article III courts of the United States exercising the judicial Power of the United States under the Authority of the United States, but they are not Courts of the United States arising under Article III exercising the judicial Power of the United States, as these territorial courts are incapable of receiving the judicial Power of the United States. In the territories, Congress exercises the combined powers of a general and of a state government. See *Palmore v. United States*, 411 U.S. 389, 398-399 (1973); *O'Donoghue v. United States*, 289 U.S. 516, 539 (1933); *American Insurance Co. v., Canter*, 26 U.S. 511, 546 (1828).

In *O'Donoghue, supra. at 530* "The Constitution, in distributing the powers of the government, creates three distinct and separate departments—the legislative, the executive, and the judicial. This separation is not merely a matter of convenience or of

governmental mechanism. Its object is basic and vital . . . namely, to preclude a commingling of these essentially different powers of government in the same hands".

As a matter of law, with constitutional secured rights both the issues of law and facts must be adjudicated in constitutional courts arising under Article III. As the law is never disclosed to the Petitioner and the facts have not been determined in a constitutional court against them flows *a fortiori* that the Petitioner is being subjected to only "laws of Congress" wherein Congress has plenary municipal power in only certain geographical areas confined to the District, territories and possession in a legislative court, i.e. territorial court under Article IV and can withhold access to constitutional courts and even any remedy.

In the public record of the 1948 Congressional Service on page xxx state "The Congress, Laws of 80th Congress Second Session" are the Title 28 Code and not "Laws of the United States as found in Article VI of the Federal Constitution.

But the Petitioner is not domiciled in the District, a territory or possession.

V. United States District Court is a territorial court and unconstitutional in the several States.

While it is true Congress can create jurisdiction for courts under Article I, Article III and under Article IV, which includes the Administrative State, but the current Circuit Courts of Appeal and the USDCs exercises no "judicial Power of the United States under the Authority of the United States" ("judicial Power of the United States") arising under

Article III in all Cases in Law and Equity of the Constitution of the United States amended by the qualified Electors of the several States.

Public Law 80-773, section 132 consolidated two inherently opposed court jurisdictions and renamed the result the ***United States District Court***. This newly renamed court no longer exercised the judicial Power of the United States from the Constitution arising under Article III thereby removing it as an independent court of the judicial branch. Attempts to clothe the USDC, a legislative Article IV court, with Article III powers has been adjudicated by this Court on numerous occasions.

A territorial, i.e. legislative, court *is not* one of those mentioned in Article III of the constitution declaring that the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as congress may from time to time establish, see *McAllister v. U.S.*, 141 U.S. 174(1891). The court said that "Congress must not only ordain and establish *inferior courts within a state*, and prescribe their jurisdiction" * * * "before they can be invested with any portion of the judicial power of the Union" and that "[t]hese [territorial] courts, then, are not constitutional courts, in which the judicial power conferred by the constitution on the general government can be deposited. *They are incapable of receiving it.* They are legislative courts . . .," *ibid* at 181 (emphasis added). "There is no exception to this rule in the constitution", *ibid* at 182.

The jurisdiction in the territorial courts exercises no part of the judicial Power of the United States conferred by the constitution. "The courts are the legislative courts of the territory, created in virtue of the clause which authorizes congress to make all needful rules and regulations respecting the

territories belonging to the United States,' *ibid at* 183. It is "settled that courts in the territories, created under the plenary municipal authority that congress possesses over the territories of the United States, are not courts of the United States created under the authority conferred by that article [3]", *ibid,* at 184.

The courts created under the constitution and existing in the states are distinguished from those created by congress and existing in the territories. The courts in the territories are not 'constitutional courts,' but are 'legislative courts,' created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables congress to make all needful rules and regulations, respecting the territory belonging to the United States', *American Insurance Co. v. Canter,* 26 U.S. 511(1828).

VI. Courts established for territories and insular possessions under Article IV, section 3 *cannot* be combined with courts established under Article III, section 2 and still exercise the judicial Power of the United States.

In *O'Donoghue at 532,* the often cited statement of Chief Justice Marshal is the core issue of the bright line that the founders of our constitutional Republic understood that if Congress was able to commingle its administrative issues of either Article I or Article IV courts wherein they have plenary municipal authority with the constitutional courts specifically and unequivocally secured in Article III, the people of the United States would have surrendered their independent judiciary, to wit:

> "'The Judicial Department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not, to the last degree important, that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience? * * * I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary.'
>
> **In a very early period of our history, it was said, in words as true to-day as they were then, that 'if they (the people) value and wish to preserve their Constitution, they ought never to surrender the independence of their judges.'"**

It is *well settled* that legislative or administrative courts are incapable of receiving Article III judicial Power of the United States *either directly or by appeal* in the several States and therefore they cannot be constitutional courts. *Keller v. Potomac Electric Co.*, 261 U.S. 428, 444 (1923) citing *Hayburn's Case* 2 Dall 410 (1792), *United States v. Ferreira*, 13 How. 40, 52 (1851); *Muskrat V. United States*, 219 U.S. 346, 360, 361 (1911); *Buckley v. Valeo*, 424 U.S. 1, 123 (1976); *Glidden Co. v. Zdanok*, 370 U.S. 530, 579-83 (1962); *Postum Cereal v. California Fig Nut*, 272 U.S. 693, 700 (1927); *Federal Radio Commission v. G.E. Co.*, 281 U.S. 464, 469 (1930); *American Insurance, supra at* 546 and *O'Donoghue, supra. at 536.*

In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) it was *held* that "*Congress does not have the same power to create adjuncts to adjudicate constitutionally recognized rights* and state-created rights as it does to adjudicate rights that it creates." *Ibid at 60* "In sum, our Constitution unambiguously enunciates a fundamental principle--that the "judicial Power of the United States" must be reposed in an independent Judiciary."

Ibid at 62, the Court identified "Referring to our precedents upholding the validity of "legislative courts," . . . suggest that "the plenary grants of power in Article I permit Congress to establish non-Article III tribunals in 'specialized areas having particularized needs and warranting distinctive treatment'" citing *Palmore, supra. at 408. Ibid in Northern Pipeline at 75* "Thus our reference in Palmore to *"specialized areas having particularized needs"* referred *only to geographic areas*, such as the *District of Columbia or territories outside the States of the Federal Union.* In light of the clear commands of Art. III, nothing held or said in Palmore can be *taken to mean that in every area in which Congress may legislate, it may also create non-Art. III courts* with Art. III powers." (emphasis added)

Ibid in Northern Pipeline at 80-81 "Together these cases establish two principles that aid us in determining the extent to which Congress may constitutionally vest traditionally judicial functions in non-Art. III officers. First, it is clear that when *Congress creates a substantive federal right*, it possesses substantial discretion to prescribe the manner in which that right may be adjudicated--including the assignment to an adjunct of some functions historically performed by judges. Thus

Crowell recognized that Art. III does not require "all determinations of fact [to] be made by judges," 285 U.S., at 51, 52 S.Ct., at 292; with respect to congressionally created rights, some factual determinations may be made by a specialized factfinding tribunal designed by Congress, without constitutional bar, id., at 54, 52 S.Ct., at 293. Second, the functions of the adjunct must be limited in such a way that "the essential attributes" of judicial power are retained in the Art. III court." (emphasis added) See also *ibid at 82-83.*

The Petitioner does not disagree with *Northern Pipeline at 80, supra.*, when Congress creates a federal right, all access to any remedy can be denied as held in *U.S. v. Babcock*, 250 U.S. 328, 331(1918), 'The United States, when it creates right in individuals against itself, is under no obligation to provide a remedy through the courts." It may also limit the individual to administrative remedies, see *Tutan v. U.S.*, 270 U.S. 568, 576(1925).

But within the several States the creation of a "federal right" does not and should not support the demise of all Article III courts exercising the judicial Power of the United States in the several States.

In *Northern Pipeline, supra. at 82* "Indeed, the validity of this proposition was expressly denied in *Crowell*, when the Court rejected "the untenable assumption that the constitutional courts may be deprived in all cases of the determination of facts upon evidence even though a constitutional right may be involved."" *Ibid at 84 "No comparable justification exists, however, when the right being adjudicated is not of congressional creation."* (emphasis added)

In *Crowell v. Benson*, 285 U.S. 22 (1932) the Court pronounced "In *cases brought to enforce*

constitutional rights, the judicial power of the United States *necessarily extends to the independent determination of all questions, both of fact and law*, necessary to the performance of that supreme function. The case of confiscation is illustrative, the ultimate conclusion almost invariably depending upon the decisions of questions of fact. This court has held the owner to be entitled to 'a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts.'" *Ibid at 64* "We think that the essential independence of the exercise of the judicial power of the United States, in the enforcement of *constitutional rights requires* that the federal court should determine such an issue upon its *own record and the facts elicited before it*." See also *United States v. Raddatz*, 447 U.S. 667, 682 (1980).

"Congress may not give away Article III "judicial" power to any Article I judge" *Clinton v. City of New York*, 524 U.S. 417, 482 (1998)

When constitutional courts are consolidated with administrative courts, the results are legislative courts exercising the plenary municipal authority of Congress. This action violates the authority inherent in Article III, because the judicial power of the United States was established within independent courts, then extinguished by section 132 for the District Courts and displaced with courts of limited legislative municipal authority, i.e., USDC.

In *Martin v. Hunter's Lessee*, 14 U.S. 304, 339(1816) and *The Moses Taylor*, 71 U.S. 411, 428-30(1866), it was adjudicated by this Court that *all* of the Article III judicial Power *must be vested in some court* by Congress and to withhold any judicial Power would defeat the Constitution and the separation of powers doctrine. See also *Eisentrager v. Forrestal*,

175 F.2d 961, 966(1949) and *Veith v. Jubelirer*, 541 U.S. 267, 277-78(2004). *A fortiori* the result of the H.R. 3214 consolidation in Section 132 created a tribunal known as the United States District Court that precluded the existence of the District Court of the United States. The Article III judicial power independent of Congress was legislated to be nonexistent or dormant and inaccessible to the *People of the United States* within the several States.

The historical significance of the term 'District Courts of the United States' "describes the constitutional courts created under Article III of the Constitution," *Mookini v. U.S.*, 303 U.S. 201, 205(1938). And this Court has "often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a 'District Court of the United States.'" *Id.*, (cites omitted).

This doctrine was statutorily established in the August 24, 1937 act of 50 Stat. 752, ch. 754, s. 5 and describes the term "court of the United States." None of the references in that act, or as currently defined in 28 U.S.C. § 451, include the exact term of "District Court of the United States." There is reference to the "District Court of the United States for the District of Columbia", which is obviously a court established under Article I. Instead references are to "courts of appeals, district courts constituted by chapter 5 of this title" and "[t]he terms "district court" and "district court of the United States" mean the courts constituted by chapter 5 of this title."

It is important to note the lack of capital letters for proper nouns establishes that the "district court of the United States" is not the same term as 'District Courts of the United States.' Only the latter is created under Article III, section 2, Cf. *Mookini*,

supra. The former is a legislative or administrative court exercising Article IV, section 4 legislative powers. *A fortiori* the term "court of the United States" as defined today represents courts that do not exercise the judicial Power of the United States by authority of the United States under Article III.

Congress has not been delegated authority to remove the Article III judicial Power from the judiciary. In *Alden v. Maine*, 527 U.S. 706, 739 (1999) citing *Martin* at 326, "The Federal Government, by contrast, can claim no powers which are not granted to it by the constitution, and the powers actually granted must be as such as are expressly given, or given by necessary implication." Congress has impugned the separation of powers doctrine under the Constitution and violated Article III by removing the independent judiciary from Government.

Congress did not abolish the District Courts of the United States exercising the judicial Power of the United States in 1948 or even attempt same; and, in the public record of 1948 Congressional Service Pages 1487-2174 which is conclusive and legal evidence of "law", i.e., "laws of Congress" and not "Laws of the United States" arising under Article VI.

On page 1521 of the 1948 Congressional Service Congress did create a "***United States District Court***"(s) ("USDC") in 28 U.S.C. § 132 to wit:

> **§ 132. Creation and composition of district courts**
> (a) There shall be in each judicial district a district court which shall be a court of record known as the ***United States District Court*** for the district.

> (b) Each district court shall consist of the district judge or judges for the district in active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.
> (c) Except as otherwise provided ***by law, or rule or order of court,*** the ***judicial power*** of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges. ***[Emphasis added]***

And further in 28 U.S.C. § 132, Congress did by conclusive and legal evidence provide that the "judicial power of a district court" would be posited in any "single judge" . . . or "other judges." The judicial Power of the United States is not derived or controlled "by law or rule or order of court," but under the separation of Powers by the limited delegation of Powers granted by the people of the several States in the Constitution of the United States ***source of the "judicial Power" is from the Constitution*** with Congress creating a court by statute capable of accepting same with limits of the jurisdiction as desired on the amount of "judicial Power of the United States" vested in said Court.

In the adjudged decision it is long ago been well settled that the "The Constitution must have given to the court the capacity to take it, *and an act*

of Congress must have supplied it.... " [emphasis in original] as pronounced in *Finley v. United States*, 490 U.S. 545, 547, 548 (1989), to wit:

> **It remains rudimentary law that "[a]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, *and an act of Congress must have supplied it....* To the extent that such action is not taken, the power lies dormant."** *The Mayor v. Cooper*, 6 Wall. 247, 252, 18 L.Ed. 851 (1868) (emphasis added); accord, *Christianson v. Colt Industries Operating Co.*, 486 U.S. 800, 818, 108 S.Ct. 2166, 2179, 100 L.Ed.2d 811 (1988); *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379-380, 101 S.Ct. 669, 676-677, 66 L.Ed.2d 571 (1981); *Kline v. Burke Construction Co.*, 260 U.S. 226, 233-234, 43 S.Ct. 79, 82-83, 67 L.Ed. 226 (1922); *Case of the Sewing Machine Companies*, 18 Wall. 553, 577-578, 586-587, 21 L.Ed. 914 (1874); *Sheldon v. Sill*, 8 How. 441, 449, 12 L.Ed. 1147 (1850); *Cary v. Curtis*, 3 How. 236, 245, 11 L.Ed. 576 (1845); *McIntire v. Wood*, 7 Cranch 504, 506, 3 L.Ed. 420 (1813 ***[Emphasis added]***

"Their concurrence is necessary to vest it. It is the duty of Congress to act for that purpose up to the

limits of the granted power" as pronounced in *The Mayor v. Cooper*, 73 U.S. 247, 252 (1867).

Therefore it is conclusive and legal evidence that the USDC can not exercise the judicial Power of the United States arising Article III of the Federal Constitution.

And further, as conclusive and legal evidence in the public record of the 1948 Congressional Service on page 1732 are the Revisor's Notes for 28 U.S.C. § 132 of the 1948 act wherein Congress did combine "territorial courts," being Article IV courts of the Constitution, with the purportedly "Article III" judicial Power of the United States, to wit:

> **Section 132-Section Revised**
>
> Based on title 28, U.S.C., 1940 ed., § 1, and ***section 641 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087; July 30, 1914, ch. 216, 38 Stat. 580; July 19, 1921, ch. 42, § 313,42 Stat. 119; Feb. 12, 1925, ch. 220, 43 Stat. 890; Dec. 13, 1926, ch. 6, § 1,44 Stat. 19).***
>
> Section consolidates section 1 of title 28, U.S.C., 1940 ed., and ***section 641 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation. Subsection (c) is derived from section 641 of title 48, U.S.C., 1940 ed., which applied only to the Territory of Hawaii.*** The revised section, by extending it to ***all districts,*** merely

recognizes established practice.

Other portions of section 1 of title 28, U.S.C., 1940 ed., are incorporated in sections 133 and 134 of this title. The ***remainder of section 641 of title 48, U.S.C., 1940 ed., is incorporated in sections 91 and 133 of this title.*** *[Emphasis added]*

It is well settled in that the reviser's notes are authoritative in interpreting the Code of 28 U.S.C. § 132, but limited to same, *supra*. See *United States v. National City Lines*, 337 U.S. 78, 81 (1949); *Stainback v. Mo Hock Ke Lok* Po, 336 U.S. 368 n. 12 (1949); *Aberdeen & Rockfish R. Co. v. Students Challenging Regulatory Agency*, 422 U.S. 289, 309 (1975); *Western Pac. R. Corp. v. Western Pac. R. Co.*, 345 U.S. 247, 254-255 (1953); *Pope v. Atlantic Coast Line R. Co.*, 345 U.S. 379, 384 (1953); *Tivoli Realty v. Paramount Pictures*, 80 F.Supp. 278, 280 (D. Del. 1950); *United States v. Thompson*, 319 F.2d 665, 669 (1963) (2nd Cir. 1963); *United States ex rel. Almeida*, 195 F.2d 815 (3rd Cir. 1952); *Adamowski v. Bard*, 193 F.2d 578, 581 (3rd Cir. 1952); *United States ex rel. Auld v. Warden of New Jersey State Penitentiary*, 187 F.2d 615 n. 1 (3rd Cir. 1951); *Lake v. New York Life Ins. Co.*, 218 F.2d 394, 398 (4th Cir. 1955); *Government Nat. Mortg. Ass/n v. Terry*, 608 F.2d 614, 618 n. 5 (5th Cir. 1979); *Acron Investments, Inc. v. Federal Sav. & Loan Ins. Corp.*, 363 F.2d 236, 240 (9th Cir. 1966); *Ragsdale v. Price*, 185 F.Supp. 263, 265 (M.D. Tenn. 1960); *Wham-O-Mfg. Co. v. Paradise Mfg. Co.*, 327 F.2d 748, 752 (9th Cir. 1964); *Stauffer et al. v. Exley*, 184 F.2d 962, 964 (9th Cir. 1950); *King v. United States*, 390 F.2d 894, 913 (Ct.Cl. 1968) [28 U.S.C. 2201-02]; *Matter of Contest*

of General election on Nov. 8, 1977, 264 N.W.2d 401, 405-405 (Sup. Ct. Minn. 1978); *United States v. Klock*, 100 F.Supp. 230, 233 (N.D. N.Y. 1951); *State ex rel. v. Shoemaker*, 39 N.W.2d 524, 528 (Sup. Ct. S.D. 1949); *Glenn v. United States*, 129 F.Supp. 914, 917 (S.D. Cal. 1955).

It is also settled, that even if the USDC which is inextricably intertwined with a Article IV territorial court was a true "District Court of the United States", this does not make it a constitutional court arising under Article III, as pronounced in *Mookini v. United States*, 303 U.S. 201, (1938), to wit:

> The term **'District Courts of the United States,'** as used in the rules, without an addition expressing a wider connotation, has its historic significance. **It describes the constitutional courts created under article 3 of the Constitution. *Courts of the Territories are legislative courts*, properly speaking, and are not District Courts of the United States. We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a 'District Court of the United States.'** (important case cites omitted due to space limitations) ***[Emphasis added]***

In *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816). an on point case on judicial Power, pronounced firmly that the "judicial Power" shall be vested in courts of the United States as our constitutional Republic exists only if the there exists

courts of the United States exercising the judicial Power of the United States, otherwise the people of the several States will be bound under the executive Power of the United States and the legislative Power of the United States, with no means to "expound and enforce them" *ibid at 329* and it follows that Article VI, the supreme Law of the Land becomes a nullity. Is the "shall be vested" not absolutely of mandatory equal importance to the "shall be vested" in the executive and legislative departments? The answer is yes. See *Martin ibid at 324 et seq.* In the adjudged Case of *Alden v. Maine*, 527 U.S. 706, 739 (1999) citing *Martin at 326* "The Federal Government, by contrast," can claim no powers which are not granted to it by the constitution, and the powers actually granted must be as such as are expressly given, or given by necessary implication."

VII. The Great Writ is the common-law Writ of Habeas Corpus Ad Subjiciendum and it is a Mandatory Precept Secured in the Federal Constitution.

A ***Writ*** is a ***mandatory precept*** precluding "motions" and "recasting"; and, this is well settled as pronounced in *People v. Schwarz et al.*, 248 P. 990, (Dist.Ct.App. 2nd D. Ca 1926), to wit:

> "It cannot be denied, however, **that a subpoena is a writ.** *** ***It will not be denied that a writ is a mandatory precept issued by a court, commanding the person to whom it is addressed to do or refrain from doing some act therein specified. Because it is mandatory, and is issued by a court, it is an order of***

> ***the court.*** *** The time was when a witness could not be compelled to go to court and testify, and if he attended and gave testimony his action was thought to bear the semblance of maintenance, and he ran the risk, if he came forward to testify, of being afterwards sued for maintenance by the party against whom he had ***572** spoken. *** ***A subpoena is a writ or process, and is mandatory in its nature, being a positive command. A writ of subpoena, like a writ of scire facias, fieri facias, habeas corpus, certiorari, supersedeas, and the various other writs, 'are all commands or orders of court that something be done.'*** *** In Burns v. Superior Court, 140 Cal. 1, 3, 73 P. 597, 598, the court said that the very etymology of the word 'subpoena' signifies 'an order with a penalty for disobedience.' In the case of Scott v. Shields, 8 Cal. App. 12, 96 P. 385, a subpoena is said to be: **'A writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness.'"** ***[Emphasis added]***

See also, *In re Simon*, 297 F. 942, 944, 945 (2nd Cir. 1924); *Leas & McVitty v. Merriman*, 132 F. 510, 513, 514 (C.C. W.D. Va 1904).

In the adjudged decision of the Supreme Court of the United States in *Preiser v. Rodriguez et al.*, 411 U.S. 475, 485- 487 (1973) the reasons for the "Great Writ" are pronounced.

VIII. The Affirming of all of the Claims in the Petitioner's Appeal Mandate that He be Discharge Immediately.

All of the essential elements of fact and law Affirmed in the 10th Circuit unpublished opinion of the Petitioner's Appellant Brief, which are to numerous to include in this Petition.

Also in our constitutional Republic issues of law, jurisdiction and facts are appealed, it imposes upon that Court to declare the law, rule on the facts and definitely to AFFIRM the lower criminal judgment or to over rule/vacant the USDC's criminal judgment. Neither was accomplished in the unpublished opinion. See **Appendix 02 – Nos 06-5201, 06-5198 – Circuit Court of the United States for the Tenth Circuit.**

Conclusion

And further, the Petitioner does hereby Petition this court to grant the following relief:

1. Reverse and vacate the lower court's conviction, sentence and all associated fines and penalties; and,
2. Order Blackstock's immediate and unconditional release from incarceration
3. Any and all other relief this court deems proper and necessary Our constitutional Republic hangs by a mere thread and unless we can restore it piece by piece, all is lost.

For these reasons, the Petitioner prays that this Court protects the integrity of the Constitutional Republic's judiciary system and grants certiorari to adjudicate the issues presented as the constitutional issues directly affect many other people of these

United States and the survival of our constitutional Repubic.

/s/ Richard Maynor Blackstock

Richard Maynor Blackstock
09936-062 – Inmate Pollock,
Louisiana
In *propria persona*
10632 South Memorial Drive #190
Tulsa, Oklahoma 74133
918-806-2778 Home
918-853-4321 Cellular

Appendix

Appendix 01 – CERTIFICATE OF POLITICAL STATUS, CITIZEN STATUS AND ALLEGIANCE

Original Recorded at Tulsa County, Oklahoma **– *Number* Doc # 2007 12 1649 10/30/07**
State of Louisiana) ss.
Grant Parish)
Date: October 25, 2007; **Personal description of the Holder of this Certificate of Political Status, Citizen Status and Allegiance:**
True name – **Richard Maynor Blackstock;** Date of Natural Birth – **September 26, 1941**; Location of Natural Birth – **San Diego, California**; Complexion - **white**; Race – **Caucasian**; Color of eyes – **blue**; Color of hair – **brown**; Height – **5 ft. 9.5 in.**; Weight – **161 lbs.**; Visible distinctive marks – **none**; Marital status – **married**; Nationality and Political Status - **Californian, a native of the several States**; Citizen status: **white citizen; and, American**

citizen; and, citizen of the United States of America; and, Natural Born Native and citizen of the foreign state of California domiciled in the territorial boundaries of Oklahoma, being a citizen of Oklahoma. I under oath certify that the facts above are true and correct and that the photograph affixed hereto is a likeness of me. I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, State or sovereignty, of whom I have been a subject or citizen, including any allegiance to or to be clothed with the fictional status of a "citizen of the United States" as a misnomer as declared in 14 Stat. 27 (Civil Rights Act) by Congress as amended including 42 U.S.C. §§§ 1981, 1982, 1988 CODE (not Laws of the United States) and any such use of the status of a "citizen of the United States" is under the law of necessity; that I have not knowingly or intentionally waived any of my unalienable rights of the constitutional Republic; that I will support and defend the Constitution of the United States and Laws of the United States as amended by the qualified Electors of the several States against all enemies, either foreign or domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion, so help me God.

/s/ Richard Maynor B'ackstock
Complete and true signature of holder

BEST AVAILABLE COPY

Sworn and Subscribed before me a Notary Public in and for the State of Louisiana. My Commission expires on my death
/s/ Dionne Eileen Schreckengost
Notary Public No. 68946
State of Louisiana
My Commission is for Life
[SEAL OF NOTARY]
[SEAL OF COUNT CLERK TULSA COUNTY OKLAHOMA]

Appendix 02 – Nos 06-5201, 06-5198 – Circuit Court of the United States for the Tenth Circuit

U.S. v. Blackstock
C.A.10 (Okla.),2007.
This case was not selected for publication in the Federal Reporter.Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Tenth Circuit Rule 32.1. (Find CTA10 Rule 32.1)

United States Court of Appeals,Tenth Circuit.
UNITED STATES of America, Plaintiff-Appellee,
v.
Richard Maynor BLACKSTOCK, Defendant-Appellant.
Richard Maynor Blackstock, Plaintiff-Appellant,
v.
Terence C. Kern, United States District Court, Defendant-Appellee.
Nos. 06-5201, 06-5198.

Aug. 14, 2007.

Background: Defendant was convicted in the United States District Court for the Northern District of Oklahoma of 32 counts of aiding and assisting the preparation of fraudulent tax returns. He appealed his sentence of 48 months imprisonment and subsequent denial of his petition for writ of habeas corpus.

Holdings: The Court of Appeals, Terrence L. O'Brien, Circuit Judge, held that:
(1) Court of Appeals lacked jurisdiction over appeal from order of dismissing habeas petition;
(2) indictment included sufficient details for each count to put defendant on notice of the charges and give him an opportunity to prepare a defense;
(3) district court had jurisdiction to adjudicate government's case against defendant;
(4) question of defendant's knowledge was properly submitted to jury; and
(5) sentencing could not have constituted constitutional *Booker* error.
Affirmed in part and dismissed in part.

Kenneth P. Snoke, Asst. U.S. Attorney, Kevin C. Danielson, Loretta F. Radford, Office of the United States Attorney, Tulsa, OK, for Plaintiff-Appellee.
Richard Maynor Blackstock, Oklahoma City, OK, pro se.

Before KELLY, MURPHY, and O'BRIEN, Circuit Judges.

ORDER AND JUDGMENT[FN*]

TERRENCE L. O'BRIEN, Circuit Judge.

*1 After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R.App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

A jury found Richard Maynor Blackstock guilty of thirty-two counts of aiding and assisting the preparation of fraudulent tax returns in violation of 26 U.S.C. ß 7206(2).Blackstock has filed a direct criminal appeal and a habeas petition claiming numerous errors.[FN1]We affirm in part and dismiss in part.

I. BACKGROUND

\For several years Blackstock ran an operation whereby he convinced his clients he could retrieve the entirety of the taxes paid on their income, charging only a ten percent contingency fee for his services. Eventually the government indicted Blackstock, alleging thirty-two counts of the wilful preparation of tax returns, while working as a tax preparer, which fraudulently claimed the entire amount of wages, salaries and other compensation as deductions with knowledge of such impropriety under tax law.

On April 18, 2006, the court appointed Jeffrey McGrew to represent Blackstock. Disregarding appointed counsel, Blackstock filed a pro se pre-trial motion to dismiss the indictment for lack of jurisdiction, claiming the district court lacked jurisdiction over him because, he argued, he was not a United States citizen but rather a citizen of Oklahoma. The district concluded it had personal

and subject matter jurisdiction and denied the motion.

At the arraignment on June 15, 2006, Oscar Stilley entered an appearance as retained counsel and announced he was ready for trial. McGrew was ordered to continue as stand-by counsel. At a motion hearing a few days later, Stilley stated he would represent Blackstock at trial. McGrew was again ordered to remain as stand-by counsel. Stilley represented Blackstock at the jury trial, held on June 19 through 22, 2006.

The district court instructed the jury to decide whether Blackstock had "acted willfully, that is, with the voluntary intent to violate a known legal duty" regarding the tax laws at issue. (R. Vol. I, Doc. 58 at 23.) Blackstock contends the issue is a question of law. The jury returned a guilty verdict on all counts.

After trial, Blackstock wished to fire both Stilley and McGrew and proceed pro se. The district court granted the attorneys' subsequent motions to withdraw and appointed, Dennis Caruso, to represent Blackstock at sentencing. Blackstock objected to Caruso's appointment, claiming all his attorneys were constitutionally ineffective.

Prior to sentencing, Blackstock filed pro se objections to the Pre-Sentence Report (PSR). Although Caruso was present at sentencing, Blackstock objected and stated he wished to proceed pro se. At the sentencing hearing, Caruso stated Blackstock refused to meet with him to discuss the case or otherwise cooperate with him. The district court noted Blackstock's numerous ineffective assistance complaints, but

determined the trial performance of his previous attorney, Stilley, was not constitutionally ineffective.

*2 The court proceeded to sentence Blackstock. Over Blackstock's objection, the court applied USSG ß ß 2T1.4 and 2T4.1, setting the base offense level at 20 based on a total loss of $827,587. This total included both actual and intended losses. The court also applied a 2-level increase under ß 2T1.4(b)(1) because Blackstock was in the business of preparing or assisting in the preparation of tax returns. The adjusted offense level was 22. Based on a criminal history category of I, the guideline range was 41 to 51 months. Recognizing the guidelines are advisory and considering the factors enumerated in 18 U.S.C. ß 3553(a), the court sentenced Blackstock to 36 months imprisonment on Count 1 and 12 months each on all of the other counts. The court directed these latter sentences to run concurrently with each other and consecutively to the sentence for count 1, resulting in a total of 48 months imprisonment.

Blackstock filed a direct criminal appeal (No. 06-5201) challenging the sufficiency of the indictment and the jurisdiction of the court, both personal and subject matter. He also claims the court's jury instructions were in error because the existence of a known legal duty was a question of law rather than a question of fact. In addition, he protests the district court's use of judge found facts to sentence him and maintains his trial counsels' performance failed to meet the standards under the Sixth Amendment's effective assistance of counsel guarantee.

Blackstock also filed a habeas corpus petition in the district court. The district court dismissed his

petition without prejudice. Blackstock also appeals from that decision (No. 06-5198). For convenience, we have consolidated both appeals and consider the cases in turn.

II. DISCUSSION

A. *No. 06-5198, Habeas Appeal*

1. *Appellate Jurisdiction*

[1] As we have noted, the district court dismissed Blackstock's habeas petition without prejudice, citing the rule that district courts should not normally consider collateral proceedings while the underlying criminal case is on direct appeal. *See* United States v. Prows, 448 F.3d 1223, 1228 (10th Cir.2006). Although the parties have not raised the issue, "a federal court must, sua sponte, satisfy itself of its power to adjudicate in every case and at every stage of the proceedings." State Farm Mut. Auto. Ins. Co. v. Narvaez, 149 F.3d 1269, 1270-1271 (10th Cir.1998). 28 U.S.C. ß 2253, the jurisdictional statute governing habeas appeals, requires a "final order" before it vests the Court of Appeals with jurisdiction. The district court made it clear in its order dismissing the petition that Blackstock would have the ability to re-file his habeas petition after the disposition of his direct appeal; therefore, the district court's disposition was without prejudice, and consequently non-final. Because we lack jurisdiction over the appeal, we dismiss Blackstock's habeas appeal and proceed to consider Blackstock's direct

appeal.

B. *No. 06-5201, Direct Appeal*

1. *Sufficiency of the Indictment*

*3 Blackstock alleges the indictment is void because it did not allege "the ultimate facts" to be presented to the jury and because it failed to charge " 'crimes' or 'offenses' cognizable in a court of the United States...." (Appellant's Br. at 8.) We review the sufficiency of an indictment de novo. *United States. v. Todd*, 446 F.3d 1062, 1067 (10th Cir.2006).

[2]"[A]n indictment is sufficient if it provides the defendant with adequate notice of the charges and an opportunity to prepare his defense." *United States v. Lotspeich*, 796 F.2d 1268, 1273 (10th Cir.1986). Blackstock's indictment included sufficient details for each count to put him on notice of the charges and give him an opportunity to prepare a defense, including the date of each offense, the initials of the taxpayers involved, the tax year and form used for the returns, and the amount of the false deductions claimed.

2. *District Court's Jurisdiction*

[3]Blackstock also argues the district court lacked subject matter jurisdiction and personal jurisdiction over him because he is a citizen of a state and not a citizen of the United States. We review a challenge to the district court's jurisdiction de novo. *United States*

v. Roberts, 185 F.3d 1125, 1129 (10th Cir.1999).

We need not spend much time on this frivolous claim. In *United States v. Lussier*, the court rejected the defendant's " 'silly claim' " that the district court lacked personal and subject matter jurisdiction because he was arrested on land not actually owned and administered by the federal government. 929 F.2d 25, 27 (1st Cir.1991). The court stated:
It is well settled that a district court has *personal* jurisdiction over any party who appears before it, regardless of how his appearance was obtained. 18 U.S.C. ß 3231, moreover, gives the district court subject matter jurisdiction over "all offenses against the laws of the United States."This category of offenses obviously includes the [tax] crimes defined in Title 26.

Id.(citations omitted). It simply "defies credulity to argue that the district court lacked jurisdiction to adjudicate the government's case against defendant."*United States v. Collins*, 920 F.2d 619, 629 (10th Cir.1990).

3. *Whether the existence of a "known legal duty" is a question of fact or law*

Blackstock argues the district court should have determined whether there was a "known legal duty" as a matter of law instead of submitting the matter to a jury.[FN2]

"The proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and

obligations imposed by the tax laws."*Cheek v. United States*, 498 U.S. 192, 199-200, 111 S.Ct. 604, 112 L.Ed.2d 617 (1991)."Congress has accordingly softened the impact of the common-law presumption [that every person knew the law] by making specific intent to violate the law an element of certain federal criminal tax offenses."*Id.* at 200.Thus, the Supreme Court has held the "willfulness" element requires "the 'voluntary, intentional violation of a known legal duty.' " *Id.* at 201.To make this showing, "the Government [must] prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty." *Id.*

*4 [4] The *Cheek* court made clear that "[k]nowledge and belief are characteristically questions for the factfinder...."*Id.* at 203.Indeed, the Court disapproved of the Seventh Circuit's "[c]haracteriz[ation] of a particular belief as not objectively reasonable [because it] transforms the inquiry into a legal one and would prevent the jury from considering it."We have applied the *Cheek* wilfulness standard to the same statute under which Blackstock was convicted. *See United States v. Ambort*, 405 F.3d 1109, 1114 (10th Cir.2005). Thus, it seems plain the district court properly submitted the question of Blackstock's knowledge to the jury.

Blackstock points to a pair of Fourth Circuit cases for the rule that "when the law is vague or highly debateable, a defendant-actually or imputedly-lacks the requisite intent to violate it."*United States v. Critzer*, 498 F.2d 1160, 1162 (4th Cir.1974); *accord United States v. Mallas*, 762 F.2d 361, 363 (4th Cir.1985) ("Criminal prosecution for the violation of

an unclear duty itself violates the clear constitutional duty of the government to warn citizens whether particular conduct is legal or illegal."). However, Blackstock fails to recognize the defendants in these cases were charged based on conduct that presented difficult questions of tax law: *Mallas* dealt with "[w]hether annual advance minimum royalties that are recoupable from warranted coal reserves acquired after execution of a lease but before payment of the royalty may be deducted from gross income,"*Mallas*, 762 F.2d at 363, and *Critzer* dealt with whether the defendant was required to report income derived from land held by the government in trust for the Eastern Cherokee Indians, a point upon which different branches of government disagreed. *Critzer*, 498 F.2d 1161.

It is easy to see how Blackstock's citations miss the mark; here, the law clearly defines the proscribed conduct. Blackstock does not show any legal authority suggesting it was debatable whether he could legally assist in the filing of returns which claimed *all* of the compensation, wages or other income as deductions. We therefore conclude the district court correctly followed the teaching of *Cheek* in submitting the issue to the jury.

4. *Sentencing*

[5]Blackstock argues the district court committed "constitutional *Booker* error" by using judge found facts to enhance his sentence. *United States v. Gonzalez-Huerta*, 403 F.3d 727, 731 (10th Cir.) (en banc), *cert. denied*,546 U.S. 967, 126 S.Ct. 495, 163 L.Ed.2d 375 (2005).Blackstock fails to recognize,

however, that a court commits constitutional *Booker* error only when the court uses judge found facts to enhance a sentence under a mandatory guidelines system. *Id.* In this case, the district court clearly recognized the guidelines were "advisory and not mandatory." (R. Vol. XI at 38.) Thus, the judge's sentencing could not have constituted constitutional *Booker* error.

5. *Ineffective assistance of counsel*

*5 [6] Finally, Blackstock alleges in his direct criminal appeal that his counsel was ineffective. "Ineffective assistance of counsel claims should be brought in collateral proceedings, not on direct appeal. Such claims brought on direct appeal are presumptively dismissible, and virtually all will be dismissed." *United States v. Galloway*, 56 F.3d 1239, 1240 (10th Cir.1995) (en banc).

"[I]n rare instances an ineffectiveness of counsel claim may need no further development prior to review on direct appeal." *Id.* This exception is not applicable here. Our review would be much aided by the development of testimony and evidence as well as the district court's resolution of the issue. Blackstock's ineffective assistance claim will be dismissed.

III. CONCLUSION

We DISMISS Blackstock's appeal from the dismissal of his habeas petition and the ineffective assistance of counsel claim and AFFIRM all remaining claims.

In light of the disposition of these appeals, we also GRANT counsel's pending motion to withdraw.

FN* This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R.App. P. 32.1 and 10th Cir. R. 32.1.

FN1.Blackstock proceeds pro se on appeal. Thus, we will construe his pleadings liberally. *Freeman v. Watkins*, 479 F.3d 1257, 1258 (10th Cir.2007).

FN2. We are intrigued that a defendant would argue the question is a matter for the judge instead of the jury. Were he successful in his argument, Blackstock would have ceded a matter from the jury of his peers to a judicial official.

C.A.10 (Okla.),2007.
U.S. v. Blackstock
Slip Copy, 2007 WL 2309782 (C.A.10 (Okla.)), 100 A.F.T.R.2d 2007-5563, 2007-2 USTC P 50,646

END OF DOCUMENT

Appendix 03 – Jury Instructions

INSTRUCTIONS TO THE JURY
OPENING INSTRUCTIONS

Members of the Jury:

Now that you have heard all of the evidence, it

becomes my duty to give you the instructions of the court concerning the law that you are to apply to this case.

It is your duty as jurors to follow the law as I shall state it 10 you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole, and are to regard each instruction in the light of all the others.

Regardless of any opinion which you may have as to what the law is or ought to be, you must follow the law as given to you in these instructions.

In deciding this case you must not be swayed by bias or prejudice or favor as to any party. If you decide that the Government has proved beyond a reasonable doubt that a Defendant is guilty of a crime charged, it will be my job to decide what the punishment will be. Punishment should never enter into your consideration or discussions.

PRESUMPTION OF INNOCENCE

Every defendant in a criminal case is presumed to be innocent. This presumption exists in a defendant's favor and abides with him for proper protection at every stage of the trial, unless the guilt of a defendant is established by the evidence beyond a reasonable doubt.

DEFINITIONS OF "REASONABLE DOUBT" AND "PROOF BEYOND A REASONABLE DOUBT"

The Government has the burden of proving the Defendant guilty beyond a reasonable doubt, which does not mean beyond all possible doubt. A reasonable doubt is a doubt based upon reason and common sense. It is the kind of doubt that would make a reasonable person hesitate to act. Proof

beyond a reasonable doubt must be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs .

PRESUMPTION DEFINED

A presumption is a conclusion which the law requires the jury to make from particular facts, in the absence of convincing evidence to the contrary; but, unless so outweighed the jury is bound to find in accordance with the presumption. Unless and until outweighed by evidence to the contrary, the law presumes that a person is innocent of crime or wrong, and that the law has been obeyed.

CONSIDERATION OF THE EVIDENCE

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence which I have admitted in this case. While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the evidence as you feel are justified in light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and the evidence in this case.

EVIDENCE

The evidence which you may consider in reaching your verdict includes. 1. The sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness; 2. The exhibits which have been received into evidence; and, 3. Any facts to which all the lawyers have agreed or stipulated.

EVIDENCE – DIRECT OR CIRCUMSTANTIAL

There are, generally. speaking, two types of evidence from which a jury may properly find the

truth as to the facts of a case. One is direct evidence -- such as the testimony of an eyewitness. The other is indirect or circumstantial evidence -- the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accord with all the evidence in the case, both direct and circumstantial.

HOW TO EVALUATE THE TESTIMONY OF WITNESSES

In deciding what the facts are, you must consider all the evidence. In doing this, you must decide which testimony to believe and which testimony not to believe. You may disbelieve all or any part of any witness' testimony. In making that decision, you may take into account a number of factors including the following:

1. Was the witness able to see, or hear, or know the things about which that witness testified?
2. How well was the witness able to recall and describe those things?
3. What was the witness' manner while testifying?
4. Did the witness have an interest in the outcome of this case or any bias or prejudice concerning any party or any matter involved in the case? The testimony of a witness who provides evidence against a defendant for pay or for immunity from punishment, or any other type of personal advantage, although not improper, must be considered with great care. You must decide whether the believability of the witness' testimony was affected by his personal interest, such as for money or to escape punishment for his own misdeeds or crimes.

5. How reasonable was the witness' testimony in light of all the evidence in the case?

6.Was the witness' testimony contradicted by what that witness has said or done at another time, or by the testimony of other witnesses, or by other evidence? In deciding whether or not to believe a witness, keep in mind that people sometimes forget things. You need to consider therefore whether a contradiction is an innocent lapse of memory or an intentional falsehood, and that may depend on whether the contradiction concerns an important fact or only a small detail.

7. Was the witness' testimony bolstered by the fact he or she has said essentially the same thing on more than one occasion? If so, it may be reason for you to believe the testimony of that witness.

WHAT IS NOT EVIDENCE

Certain things are not evidence and you may not consider them in deciding what the facts are and in reaching your verdict. I will list them for you:

1. Arguments and statements by the attorneys are not evidence. What is said in opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the attorneys have stated them, your memory of them controls.

2. Questions and objections by attorneys are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition,

some testimony and exhibits may have been received only for a limited purpose; and, where I have given a limiting instruction, you must follow it.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

5. Also you should not assume from anything I may have said that I have any opinion concerning any of the issues in this case. Except for my -instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision concerning the facts.

DEFENDANT'S DECISION NOT TO TESTIFY

The defendant in a criminal case has an absolute right under our Constitution not to testify.

The fact that Defendant did not testify must not be discussed or considered in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that Defendant decided to exercise his privilege under the Constitution and did not testify.

The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

IMPEACHMENT BY PRIOR INCONSISTENCIES

A witness may be discredited or "impeached" by contradictory evidence, by a showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony.

If you believe that any witness has been so impeached, then it is your exclusive province to give

the testimony of that witness such credibility or weight, if any, as you may think it deserves.

If a witness is shown to have knowingly testified falsely concerning a material matter, you have a right to distrust such witness' testimony in other particulars; and, you may reject all the testimony of that witness, or give it such credibility as you may think it deserves.

VERDICT AS TO DEFENDANT ONLY

You are here to determine whether the Government has proven the guilt of the Defendant for the charges in the Indictment beyond a reasonable doubt. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons.

So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant for the crimes charged in the Indictment, you should so find, even though you may believe that one or more other unindicted persons are also guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the Defendant not guilty.

THE INDICTMENT

Defendant is charged in the Superseding Indictment ("Indictment") with having violated the laws of the United States.

Defendant has entered a plea of "not guilty" to the charges brought against him, thus putting at issue the charges made by the Government, and placing the burden on the Government to establish the accusations made by the required degree of proof.

You may have the Indictment in the jury room with you. You are instructed that an indictment is only a formal method of accusing a defendant of a

crime. It is not evidence of any kind against the accused, and does not create any kind of presumption, or permit any inference of guilt.

Defendant is not on trial for any act or conduct not alleged in the Indictment.

SUMMARY OF THE INDICTMENT

Defendant Richard Maynor Blackstock has been charged by Indictment with violating certain United States statutes. Rather than reading the entire Indictment to you now, I will summarize the charges against the Defendant.

In all counts of the Indictment, Counts One through Thirty Two, the Government alleges that from on or about September I, 2002, and continuing through on or about January 12,2004, in the Northern District of Oklahoma, Defendant did willfully aid and assist in the preparation and presentation to the Internal Revenue Service, U.S. Individual Income Tax Returns, including Forms 1040, and amended U.S. Individual Income Tax Returns, Forms 1040X, which were false and fraudulent as to a material matter. Specifically, the Government alleges the tax returns falsely represented that the taxpayers were entitled to claim deductions for the entire amount of wages, salaries, and other compensation for labor or for personal services rendered, during the tax years in question, citing to a so-called "claim of right." The Indictment alleges the Defendant knew and believed that said taxpayers were not entitled to deduct all of their wages, salaries, and other earnings from their labor or personal services from their taxable income for the tax years in question.

COUNTS ARE SEPARATE CRIMES

You are instructed that a separate crime or offense is charged in each count of the Indictment.

Each crime or offense as charged and the evidence applicable thereto, should be considered separately, and a verdict of guilty or not guilty as to each count or offense should likewise be considered separately. Of course, some evidence may pertain to more than one count.

The fact that you may find Defendant guilty or not guilty as to the crime or offense charged in one count should not control your verdict with reference to the other counts.

PROOF OF "ON OR ABOUT"

The Indictment charges that the offenses or certain events occurred "on or about" a certain date. It is not necessary that the proof establish with certainty that the offenses or events occurred on the exact date alleged. It is sufficient, if the evidence shows beyond a reasonable doubt, that such occurrences were committed on dates reasonably near the date alleged.

PROOF OF KNOWLEDGE OR INTENT RULE 404(b) EVIDENCE

You have heard evidence regarding Defendant's failures to file tax returns for certain years. You have also heard evidence regarding Defendant's promotion and/or sale of certain "corporate sole" packages. These acts are not charged in the Indictment and are referred to as "Rule 404(b)" evidence.

Evidence that an act was done or that an offense was committed by Defendant at some other time is not, of course, any evidence or proof whatever that at another time Defendant performed a similar act or committed a similar offense, including the offenses charged in this Indictment.

Evidence of a similar act or offense may not be considered by you in determining whether Defendant actually performed acts charged in the Indictment.

Nor may such evidence be considered for any other purpose whatever unless you first find beyond a reasonable doubt from other evidence in the case, standing alone, that Defendant performed the acts charged in the Indictment.

If you should find beyond a reasonable doubt from other evidence in the case that Defendant did the act or acts alleged in the particular count under consideration, you may then consider evidence as to an alleged act committed at another time of a like nature in determining Defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident in the act or acts charged in the particular count.

STATUTE DEFINING THE OFFENSE IN COUNTS ONE THROUGH THIRTY-TWO

You are instructed that Title 26, United States Code, section 7206(2) provides in pertinent part:

Any person who ... willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document ...

shall be guilty of an offense against the laws of the United States.

ESSENTIAL ELEMENTS OF THE OFFENSE CHARGED IN COUNTS ONE THROUGH THIRTY-TWO

In order to sustain its burden of proof for the

crimes as charged in Counts One through Thirty-two of the Indictment, the Government must prove each of the following essential elements beyond a reasonable doubt:

FIRST: Defendant willfully aided or assisted in or counseled or advised the preparation or presentation of an income tax return.

SECOND: This income tax return falsely stated that the taxpayer was entitled under the provisions of the Internal Revenue laws to claim deductions for the entire amount of wages, salaries and other compensation for labor, or for personal services rendered, during the tax years in question, citing to a so-called "claim of right";

THIRD: Defendant knew the statement in the income tax return was false;

FOURTH: Defendant acted willfully, that is, with the voluntary intent to violate a known legal duty; and

FIFTH: The false statement was material. A statement is material under this law if it concerned a matter necessary to the correct computation of taxes owed and the statement was capable of influencing the decision of the Internal Revenue Service.

It is not necessary that the Government prove the falsity or fraud was made with the knowledge of the taxpayer.

The income tax return must be false as to the taxpayer's claim for deductions for the entire amount of wages, salaries and other compensation for labor, or for personal services rendered, during the tax years in question, citing to a so-called "claim of right." The Government, however, is not required to prove that the taxpayer owed any additional tax for the year in question. A monetary loss to the government is not an element of this crime.

AGENCY OF THE UNITED STATES

The Internal Revenue Service is an "agency" of the United States.

"KNOWINGLY," "UNLAWFULLY," "WILLFULLY" - DEFINED

An act or a failure to act is "knowingly" done if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

The word "unlawfully" means contrary to law. Therefore, to do an act unlawfully means to do willfully something that is contrary to law.

An act is done "willfully" if done voluntarily and intentionally and with the specific intent to do something the law forbids, that is to say, with bad purpose, either to disobey or to disregard the law.

GOOD FAITH DEFENSE

Good faith is a complete defense to the charges of willfully filing false amended tax returns, willful failure to make tax returns, and willful tax evasion, because good faith is inconsistent with willfulness.

While the term "good faith" has no precise definition, it means, among other things, an honest belief, a lack of malice, and the intent to perform all lawful obligations. A person who acts on a belief or on an opinion honestly held is not punishable under this statute merely because that honest belief turns out to be incorrect, wrong, or objectively unreasonable. The tax laws subject to criminal punishment only those people who act willfully.

If a person acts without reasonable grounds for belief that his conduct is lawful, it is for the jury to decide whether that person has acted in good faith in order to comply with the law or whether that person has acted willfully.

In determining whether or not the Government has proven that Defendant acted willfully or whether Defendant acted in good faith, you must consider all

of the evidence received in the case bearing on Defendant's state of mind.

The burden of proving good faith does not rest with Defendant because he has no obligation to prove anything to you. The Government has the burden of proving to you beyond a reasonable doubt that Defendant acted willfully.

Of course, in deciding whether to credit the Defendant's good faith belief claim, you are free to consider any admissible evidence from any source showing that he was aware of his duty to treat wages as income, including evidence showing his awareness of the relevant provisions of the Tax Code or regulations, of court decisions rejecting his interpretation of the tax law, of authoritative rulings of the Internal Revenue Service, or of any contents of the personal income tax return forms and accompanying instructions that made it plain that wages should be treated as Income.

PAPERWORK REDUCTION ACT

You have heard testimony from certain Internal Revenue Service agents regarding the Paperwork Reduction Act. The Court has concluded, as a legal matter, and you are instructed that, any alleged violations of the Paperwork Reduction Act by the Internal Revenue Service are not a complete defense to the charges in the Indictment.

Testimony you have heard regarding the Paperwork Reduction Act should be considered only to the extent you find such testimony relevant to the issues of whether Defendant acted "willfully" and whether Defendant is entitled to the "good faith" defense.

A JURY'S DUTY TO DELIBERATE

It is your duty, as jurors, to talk with one another and to deliberate in the jury room. You should try to

reach an agreement if you can. Each of you must decide the case for yourself, but only after consideration of the evidence with the other members of the jury. While this is going on, do not hesitate to reexamine your own opinions and change your mind if you are convinced that you are wrong. But do not give up your honest beliefs solely because the others think differently, or merely to get the case over with. Your only interest is to determine whether the Government has proven the Defendant guilty beyond a reasonable doubt.

The decision you reach in the jury room must be unanimous. You must all agree. Your deliberations will be secret. You will never have to explain your verdict to anyone.

VERDICT

If you find from the evidence in this case and under these instructions, beyond a reasonable doubt, that the Defendant is guilty of a crime charged against him in this case, then you should find the Defendant guilty as to such count. If, however, you do not so find, or if you entertain a reasonable doubt as to the guilt of the Defendant of the crime charged against him, then you should find the Defendant not guilty as to such count.

The Court will furnish you a form of verdict for your use in this regard.

CLOSING

You are the judges of the facts, the weight of the evidence, and the credibility of the witnesses. From all the facts and circumstances appearing in evidence and coming to your observation during the trial and aided by the knowledge which you each possess in common with other persons, you will reach your conclusions.

These instructions contain all the law, whether

statutory or otherwise, to be applied by you in this case, and the rules by which you are to weigh the evidence and determine the facts in issue. You will not use any method of chance in arriving at a verdict, but will base it on the judgment of each juror concurring therein.

SELECTION OF FOREPERSON, COMMUNICATION WITH THE JUDGE, VERDICT FORM

When you go to the jury room to begin considering the evidence in this case, I suggest that you first select one of the members of the jury to act as your foreperson. This person will help guide your discussions in the jury room. Once you are there, if you need to communicate with me, the foreperson will send a written message to me. However, do not tell me, or any other person, how you stand as to your verdict. For instance, if you are split "6-6" or "8-4" -- don't tell me that in your note.

As I have mentioned, the decision you reach must be unanimous; you must all agree.

You will find the verdict form included with these instructions. This is simply the written notice of the decision that you reach in this case. When you have reached a decision, have the foreperson sign the verdict form, put the date on it, and return it to me. The marshal will come forward to be sworn.

/s/ Terrence Kern
United States District Judge

Appendix 04 – Excerpt of Testimony of IRS Agent Government Witness Brian Miller.

A. Yes.

Q. Now, you -- isn't it true that the government has to prove that Mr. Blackstock was aware of these specific provisions of law that he's charged with violating?
A. No.
Q. You don't think that's true?
A. No.
Q. He would at least have to have knowledge that the conduct that he was engaging in violated a known legal duty, would he not?
A. Yes. I think that is part of the rules, that he has to know that there is a known legal duty.
Q. The government sent this gentleman letters telling him that he might get a $500 penalty, did they not?
A. I believe so, yes.
Q. But now, wouldn't it have been real simple to say, hey, also under 7206(2), you might have criminal sanctions. They could have done that, correct?
A. I don't recall if that's -- if it mentions criminal sanctions in that letter or not.
Q. Well, we could look and see, right?
A. Sure, if you'd like.
Q. Let's see if we can find that.
MR. STILLEY: If we could get 43 up on the screen.
Q. (By Mr. Stilley) Let's look at the second page.
Do you see that?
A. Yes.
Q. Do you see anywhere that Mr. Blackstock was warned that he might be facing potential criminal sanctions?
A. Not in this letter.
Q. But as a matter of fact, it does say that he can appeal if he wants to, correct?
A. Yes, it does.
Q. Now, I don't see that this particular letter says

that the position taken is frivolous, do you?
A. This letter doesn't, but I believe there's another letter that does, if I remember correctly.
Q. Let's look at -- do you know the number of that letter?
A. I do not.
MR. STILLEY: Let's take a look at Government's Exhibit 42, put that on the screen.
THE WITNESS: This letter also does not mention a criminal penalty.
Q. (By Mr. Stilley) This letter was just a couple of weeks after the other letter. The other letter was March 26th of 2003, correct?
A. Right. This one is April 7th.
Q. That is correct. Now, at this point in time on April 7, 2003 or thereabouts, Mr. Blackstock is on notice that he might have to pay a $500 penalty for making his claim, right?
A. Right.
Q. And it says -- it directs his attention to Section 6702 of the Internal Revenue Code, correct?
A. Yes.
Q. Does 6702 of the Internal Revenue Code inform Mr. Blackstock that he might face criminal penalties if he doesn't cease and desist?
A. No.
MR. STILLEY: Your Honor, could I have a moment with my client?
THE COURT: You may.
MR. STILLEY: Your Honor, would it be possible for us to break for lunch at this point in time? I think I may be done, but I would like to have the lunch break to think about that.
THE COURT: No.
MR. STILLEY: In that case, I just pass the witness.
THE COURT: Redirect.